

MOTION FILED  
MAR 17 1979

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1978

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**No. 78-1255**

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HARRY B. HELMSLEY, ET AL.,  
vs. *Appellants,*  
THE BOROUGH OF FORT LEE, ET AL.,  
*Appellee.*

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AMERICANA ASSOCIATES, ET AL.,  
vs. *Appellants,*  
THE BOROUGH OF FORT LEE, ET AL.,  
*Appellee.*

---

NEW JERSEY REALTY COMPANY, ET AL.,  
vs. *Appellants,*  
THE BOROUGH OF FORT LEE, ET AL.,  
*Appellee.*

---

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY.

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**MOTION FOR LEAVE TO FILE BRIEF  
AS AMICUS CURIAE  
AND  
BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION  
OF REALTORS® IN SUPPORT OF JURISDICTIONAL  
STATEMENT OF APPELLANTS.**

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Of Counsel:  
JOHN R. LINTON,  
LAURENE K. JANIK.

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The National Association of Realtors® respectfully moves

this Court for leave to file its brief *amicus curiae* in support of Appellants' jurisdictional statement. In support of its motion, the National Association asserts its firm belief that the decision of the Supreme Court of New Jersey preserving the validity of a Fort Lee Rent Control Ordinance (Ordinance No. 76-8) previously challenged as being violative of the Due Process Clause of the Fourteenth Amendment of the United States Constitution presents substantial federal questions and issues appropriately suited for resolution only by this Court.

The National Association of Realtors® respectfully requests that it be permitted to file the annexed brief *amicus curiae*.

Respectfully submitted,

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ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY.

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**BRIEF OF AMICUS CURIAE NATIONAL ASSOCIATION  
OF REALTORS® IN SUPPORT OF JURISDICTIONAL  
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### IDENTITY OF AMICUS.

The National Association of Realtors® (hereinafter NAR) is a non-profit professional association comprised of persons engaged in all phases of the real estate business. Its membership includes fifty State Associations of Realtors®, over 1,700 Member Boards of Realtors® and nearly 750,000 individuals.

NAR was created in 1908 to serve the public and this nation by promoting professional competence in the rendition of real estate services and by protecting the rights of owners and users of the land. Its efforts for nearly three quarters of a century both in the public and private sectors have contributed materially to making Americans the best housed people in the world.

### INTEREST OF AMICUS.

The interest of NAR in this cause derives from its continuing concern for and commitment to the housing needs of the nation. The hundreds of thousands of NAR members and the millions of Americans they serve have followed the painful and protracted progress of this cause through the courts.

Now that this case has reached this honorable Court, NAR respectfully urges that the substantial Constitutional issues and federal questions it presents be recognized and authoritatively resolved.

The issue presented by this cause is not merely the legality of an ordinance in a small town in New Jersey. The issue is the measure of protection afforded to property owners by the Due Process Clause of the Fourteenth Amendment of the United States Constitution against the effective confiscation of the economic value of land ownership through the exercise of the police power of states and communities. The issue is whether the Constitution permits a state or municipality to take away the primary rights and benefits of land ownership without compensation and convert the title to land into nothing more than an empty "fee".

This is not an issue which can be deferred to a more convenient season. Analogous rent control ordinances presently exist in over 200 municipalities. Various states which presently have no rent control have prepared to impose it through the enactment of enabling legislation while numerous other state legislatures have rent control legislation under consideration. Many, if not most of these ordinances and statutes, like the ordinance at issue in this cause, involve the effective confiscation of investment in land.

The existence of these rent control ordinances and statutes, coupled with the absence of any definition by this Court of the permissible limits of their application and effect under the Constitution, has already done serious damage to the housing resources of the nation. Continued silence by this Court, we respectfully submit, assures irreparable harm.

The uncertain and ill-defined Constitutional safeguards against the confiscation of land values through rent control not only impair the exercise of legitimate property rights, but also, and perhaps more importantly, detrimentally effect the "general welfare" of the people.

As representatives and agents of property owners and investors, over 750,000 members are uniquely aware of the need to resolve for the nation as a whole the fundamental Constitutional issues presented here.

They know that confiscatory rent control diminishes and ultimately forecloses investment in rental properties, discourages expenditures in existing rental properties and forces the conversion of rental units to condominiums.

They know that the failure to produce new rental properties and to maintain existing rental properties exacerbates the shortage of rental housing.

They know that the shortage of rental housing impacts most directly on the elderly, minorities and new families, all of whom are most in need of better housing.

They know that when private investment in rental housing is made to fail, public housing is the only available alternative.

Moreover, the federal government has recognized the serious financial risks imposed on property interests by rent control. The Department of Housing and Urban Development has, through regulations, sought to protect their interests by preempting the entire field of rent regulation by state and local rent control boards with respect to projects which are federally subsidized and insured. Federally insured projects without federal subsidies have also been removed from the onus of local rent controls upon the government's discovery that rent control jeopardizes its economic interest.

Until this Court recognizes that the safeguards of the Fourteenth Amendment extend to owners of rental properties subject to rent control, the rental housing needs of this nation cannot be satisfied, the expansion of this nation's housing resources will be curtailed, the maintenance of existing resources will deteriorate and ultimately cease, and the highest and best use of the land will not be possible.

Few cases coming before this Court in recent years have presented an issue of greater significance to Americans. This Court's decision to hear this cause will determine the manner in which Americans will be housed for generations to come. It will determine whether real estate is a reasonable investment; whether private ownership will be forced to yield to public housing; and whether the interests of future generations in housing opportunity will be foreclosed by the interests of those who presently hold a lease.

NAR does not here presume to argue the merits of the issues presented by this cause. The views it presents are intended solely to emphasize for this Court three important factors: that the issues extend beyond the boundaries of any one state and involve the general welfare of the nation and its people; that the issues can be resolved only by this Court; and that the need for definitive resolution is immediate.

## CONCLUSION.

NAR respectfully urges the Court to recognize the substantial nature of the federal questions presented and to note probable jurisdiction and fully consider this case on the merits with briefs and oral argument.

*Amicus* sought consent of appellants and appellees and received the consent of appellants. (See Appendix A.)

Respectfully submitted,

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Curiae.*

JOHN R. LINTON,  
LAURENE K. JANIK.



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**APPENDIX.**

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RAVIN & KESSELHAUT  
Counsellors at Law

March 9, 1979

John Linton, Esq.  
National Association of Realtors  
430 North Michigan Ave.  
Chicago, Ill. 60611

Re: Harry B. Helmsley et al. vs.  
The Borough of Fort Lee et al.  
Supreme Court of the United States  
Docket No. 78-1255

Dear Mr. Linton;

On behalf of the Appellants in the above docketed Appeal  
to the Supreme Court of the United States we consent to your  
filing a brief Amicus Curiae.

Very truly yours,

RAVIN & KESSELHAUT,  
/s/ MARTIN KESSELHAUT,  
MARTIN KESSELHAUT.

MK/tr